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By Fax

Mr. Stephen J. Silva
USEPA, Region 1, New England
Manager, Maine State Program
One Congress Street Suite 1100
Boston MA. 02114

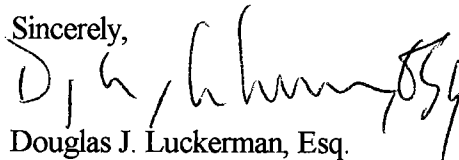
Re: Comments from the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians on the State of Maine's Application for Authorization to Administer the NPDES Program Within State Boundaries, Including Tribal lands and Territories.

Dear Mr. Silva:

It has come to my attention that an inadvertent error occurred in a citation that was repeated on three separate pages of the above referenced document. On each occasion the cite "(d)(3)(D)" should have appeared as "(d)(4)(D)". Attached please find errata sheets which correct the error.

I respectfully request that the attached pages be placed in the document and become part of the official record on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Luckerman", followed by a stylized flourish or date "8/9".

Douglas J. Luckerman, Esq.

State of Maine over lands owned by or held in trust for the benefit of the band or its members. 25 U.S.C 1725 (e) (2).

However, some have argued that the Maliseet were disenfranchised from their jurisdiction by the Act and that the federal government also has relinquished its trust authority. If that is true, then section 1725 (e)(2) has no logical meaning and is surplusage. If the Maliseet have no jurisdiction, than the purpose of this section can only be to provide advance Congressional approval for all future *enhancements* to Maliseet jurisdiction. Such an interpretation turns the State's twenty-five year record of insisting that the Maine Tribes have no jurisdiction, on its head. Congress was certainly not concerned about the State providing the Maliseet *too much* jurisdiction!

However, Congress did express its concern that the State might improperly attempt to *diminish* Maliseet jurisdiction. In 25 U.S.C 1724 (d)(3)(D), Congress declared that the Maliseet could not take land into Trust until they agreed on terms and appropriate legislation was enacted by the State. Rather than leave it to the State to define the terms of such an agreement, Congress placed specific limits on what the State could address, including an absolute restriction on jurisdiction:

such agreement shall not include any other provision regarding the enforcement or application of the laws of the State of Maine. 25 U.S.C. 1724 (d)(4)(D).

The only conclusion that can give a logical, meaningful and consistent effect to both sections 1725 (e)(2) and 1724 (d) (4) (D) is that they were included *because* the

3. THE EPA HAS A LEGALLY ENFORCEABLE FIDUCIARY DUTY TO PRESERVE AND PROTECT THE MALISEET'S AND MICMAC'S TRIBAL CULTURE AND TRADITIONS. A DECISION TO DELEGATE THE NPDES PROGRAM TO THE STATE MAY ADVERSELY IMPACT THE CULTURE AND TRADITIONS OF THE TRIBES AND WOULD NOT BE IN THEIR BEST INTERESTS

NATURE OF THE FEDERAL TRUST RESPONSIBILITY

A legally enforceable Trust responsibility attaches to the federal government when an obligation of the federal government can be interpreted from the terms of a statute.

Navajo Tribe of Indians v. United States, 624 F.2d 981, 988 (Ct. Cl. 1980); The United States Congress made such a legally enforceable commitment to the Tribes in Maine to protect and preserve their culture and traditions.

The Act is structured to implement this commitment in at least three ways: 1) The Act provides for money, land and natural resources to be placed in a federal Trust.⁶ (25 U.S.C 1724 et seq.); 2) The Act provides protections against the diminishment of Tribal jurisdiction. (Micmac Act, Section 6 (d), 25 U.S.C 1724(d)(4)(D) and 1725 (e)(2)), and, 3) The Act provides authority to Tribal governments to preserve Tribal culture and traditions. (25 U.S.C. 1726 and Micmac Act, Section 7 (a)). Moreover, the legislative history of the Act supports this interpretation:

Nothing in the Settlement provides for acculturation, nor is it the intent of Congress to disturb the culture or integrity of the Indian people of Maine. To the contrary, the settlement offers protections against this result being imposed by outside entities by providing for

⁶ In signing the Act, President Carter acknowledged that "the Federal Government had failed the to live up to its responsibility to the Maine Indians" and that the Act addressed this injustice by creating "a permanent land base and trust fund for the tribes..." Maine Indian Claims Settlement Act of 1980. Remarks at the Bill Signing Ceremony, October 10, 1980 (Attachment 14)

CONGRESS INTENDED TO CONTINUE TRUST RELATIONSHIP

The language of both of the 1980 and 1991 Settlement Acts clearly intends there to be a continuing Trust relationship between the federal government and the Maine Tribes. Both Settlement Acts create a Trusteeship for Tribal funds, Tribal lands and Tribal natural resources pursuant to 17 U.S.C 1724 and P.L 102-1721, 105 Stat.1143, Section 4 (1991).

Moreover, Congress exhibited a notable interest in the continuation of the Trusteeship in order to protect the jurisdictional rights of the Maliseet and Micmac. In the Act, Congress explicitly retained the authority to ratify and approve future agreements regarding State-Tribal jurisdiction. (25 U.S.C 1725 (e) (2) and at Public Law 102-171, 105 Stat. 1143, Section (6)(d) (1991)). Furthermore, Congress acted to protect the Maliseet from any attempt by the State to improperly diminish the Tribe's jurisdiction:

... such agreement shall not include any other provision regarding the enforcement or application of the laws of the State of Maine. 25 U.S.C 1724 (d) (4) (D).

COMPARE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO MAINE ACTS

Congress knew how to explicitly abrogate the Trust relationship and chose not to do so in the Act. Compare provisions of the Maine Acts with similar provisions of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C 1601 et seq. (ANCSA). The Supreme Court found that Section 1601(b) of ANSCA explicitly abrogates the federal Trusteeship⁹:

⁹ While the Maliseet and Micmac do not endorse the outcome of Venetie, the analysis used by the Court is applicable to this case.